

ORIGINAL

No. 82175-5

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

VALENTIN SANDOVAL,

Petitioner.

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AMICUS CURIAE BRIEF OF
THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

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I. INTRODUCTION

There is no dispute that Mr. Sandoval's attorney affirmatively misadvised him as to the immediate deportation consequences of his guilty plea. The only dispute is whether his attorney's misadvice on such a critical issue is legally meaningful – i.e., whether it constitutes ineffective assistance of counsel that would invalidate his plea if prejudice is also shown. Washington policy and precedent hold that immigration misadvice *is* legally meaningful, and this is where the Court of Appeals erred.

Specifically, the Court of Appeals decision conflicts with Washington policy and precedent that emphasizes the importance of accurate immigration advice from both the court and counsel as part of a fair guilty plea process. In evaluating Mr. Sandoval's case, the Court of Appeals erroneously focused on the requirements for the court's advisement under the "collateral consequences" doctrine, rather than his attorney's duty to provide effective assistance, including accurate advice regarding immigration consequences, in the plea process. Because the Court of Appeals failed to give effect to Washington precedent recognizing that an ineffective assistance claim based on affirmative immigration misadvice must be analyzed under the *Strickland* standard for deficient performance, Amicus urges this Court to reverse.

II. IDENTITY OF INTEREST OF AMICUS

The American Civil Liberties Union of Washington ("ACLU") adopts and incorporates its statement of interest contained in its accompanying motion.

III. STATEMENT OF THE ISSUE

Under Washington law, does a criminal defense attorney's affirmative misadvice regarding the deportation consequences of a guilty plea support an ineffective assistance claim that is not categorically barred by the collateral consequences doctrine?

IV. STATEMENT OF THE CASE

Mr. Sandoval is a lawful permanent resident, but not a citizen, of the United States, who pled guilty to a deportable offense on October 3, 2006. *Petition for Review* at 3. Prior to entering his plea, Mr. Sandoval told his attorney that he was not a United States citizen and that avoiding deportation was a paramount concern in resolving his criminal charges. *Id.* at 3. Without consulting immigration counsel or otherwise investigating the immigration consequences of Mr. Sandoval's plea, Mr. Sandoval's attorney advised him that the plea would not subject him to immediate deportation. *Id.*; *Petitioner's Supplemental Brief* at 1. Relying on that affirmative misadvice, Mr. Sandoval elected to enter the guilty plea. *Petition for Review* at 3-4; *Petitioner's Supplemental Brief* at 2. In

fact, after entering his plea, Mr. Sandoval was immediately detained by United States Immigration and Customs Enforcement and deportation proceedings were commenced. *Petitioner for Review* at 4; *Petitioner's Supplemental Brief* at 2. As amici Washington Defender Association et al. explain in their brief, Mr. Sandoval's attorney could have avoided these consequences by seeking a plea to a different offense.

V. ARGUMENT

A. In Washington, Effective Assistance of Counsel Necessarily Includes a Duty of Counsel to Provide Accurate Advice Regarding Deportation Consequences.

1. The State of Washington Recognizes that Accurate Advice Regarding Deportation Consequences Must Inform the Plea Process.

The State of Washington has a long history of recognizing the rights of non-citizen defendants in the criminal process. More than 25 years ago, the Washington legislature passed RCW 10.40.200 ("Deportation of Aliens Upon Conviction – Advisement"), which requires courts to ensure that "acceptance of a guilty plea be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea." RCW 10.40.200. In so doing, the legislature acknowledged that in "in many instances involving an individual who is not a citizen of the United States ... a plea of guilty is entered without the defendant knowing that conviction of such offense is grounds for deportation, exclusion from admission to the United States, or

denial of naturalization pursuant the laws of the United States.” *Id.* To “promote fairness to such accused individuals” in the criminal process, the legislature directed that courts “shall vacate the judgment and permit the defendant to withdraw the plea of guilty” when a non-citizen pleads to an offense with immigration consequences without receiving the advisement. *Id.* In accord with RCW 10.40.200, the plea form promulgated by court rule was amended to include an immigration consequences advisement, now contained in CrR 4.2(g) at 6(i).¹

Other jurisdictions have since joined Washington in providing this protection for non-citizen defendants, and Washington is now one of the majority of jurisdictions that require their courts to give an immigration advisement during the plea colloquy.² The fact that Washington elected to require this advisement, as early as 1983, reflects a strong state policy in favor of providing non-citizen defendants with accurate information regarding potential immigration consequences during the plea process.

¹ The advisement reads “If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” CrR 4.2(g) at 6(i).

² At least 30 jurisdictions have now adopted statutes, rules or standard plea forms that require a defendant be advised regarding potential immigrations consequences during the plea colloquy. *See Appendix A.* The states have led in this arena; federal courts do not currently require an immigration advisement. *See* Fed. R. Crim. P. 11 (providing required federal advisements).

Courts are not and cannot be the only source for this advice, however. While Washington's statutory advisement recognizes the duty of the court to provide a general immigration advisement at the time a plea is entered, defense counsel has a much broader, constitutional obligation to advise a defendant about matters critical to making an informed decision whether to enter a guilty plea. *See State v. Littlefair*, 112 Wn. App. 749, 767, 51 P.3d 116 (2002) ("[W]hen the legislature enacted RCW 10.40.200, it intended to grant a *statutory* right to be advised of deportation consequences that would supplement whatever *constitutional* right a defendant might (or might not) have.") (emphasis in the original); *see also In re Resendiz*, 19 P.3d 1171, 1178 (Cal. 2001) ("What constitutes ineffective assistance of counsel is a question of constitutional law, not of legislative intent. Thus, that a defendant may have received valid [statutory] advisements from the court does not entail that he has received effective assistance of counsel in evaluating or responding to such advisements."). In fact, the statutory advisement of the court, which is given as part of the colloquy at the time a plea is entered, would be an empty formality if not preceded by advice of counsel, provided pursuant to defense counsel's broader duty to advise a defendant and answer questions about the consequences of entering a plea.

Defense counsel's responsibility to provide accurate advice to a defendant who is deciding whether to enter a guilty plea, including accurate advice about deportation consequences, is of constitutional magnitude, governed by ineffective assistance standards set by *Strickland v. Washington*, 466 U.S. 668 (1984). See *Hill v. Lockhart*, 474 U.S. 52 (1985) (holding *Strickland* applies to ineffective assistance claims arising from counsel's advice regarding a guilty plea); *State v. Jeffries*, 105 Wn. 2d 398, 418, 717 P.2d 722 (1986) (recognizing same). In the plea context, effective assistance of counsel "requires that counsel *actually and substantially* [assist] his client in deciding whether to plead guilty." *State v. McCollum*, 88 Wn. App. 977, 982, 947 P.2d 1235 (1997) (citing *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d 683 (1984)) (emphasis added). Washington cases acknowledge the broad responsibility of defense counsel to provide substantial assistance in the plea context, and – in the context of affirmative misadvice – explicitly recognize that the constitutional right to effective assistance of counsel is not limited to those discrete matters for which the court has a duty to advise the defendant (i.e., the "direct" consequences of a plea), as discussed below.

2. **Washington Courts Also Recognize that the Collateral Consequences Doctrine Does Not Preclude an Ineffective Assistance Counsel Claim Based on Affirmative Misadvice.**

Courts in Washington have long recognized that an attorney's affirmative misadvice regarding an issue typically characterized as "collateral" to a conviction may still constitute constitutionally deficient performance warranting withdrawal of a plea. *See e.g., State v. Stowe*, 71 Wn. App. 182, 187 858 P.2d 267 (1993) (attorney's erroneous advice regarding the effect of defendant's plea on his continued eligibility for military service stated ineffective assistance warranting withdrawal). As the Court of Appeals noted in *Stowe*, "the question here is not whether counsel failed to inform defendant of collateral consequences, but rather whether counsel's performance fell below the objective standard of reasonableness[.]" *Id.* When an attorney affirmatively misadvises a defendant, in other words, the fact that a consequence has been characterized as "collateral" does not erase the attorney's deficiency, nor does it eliminate the Court's obligation to determine, under the *Strickland* standard, whether the attorney provided constitutionally deficient representation.

Consistent with this rule, Washington courts have regularly acknowledged that the collateral consequences doctrine does not create an

automatic bar to withdrawal of a plea when defense counsel has affirmatively misadvised a defendant as to immigration consequences. *See e.g. In re Peters*, 70 Wn. App. 702, 707 n.3, 750 P.2d 643 (1988) (stating “[d]ifferent considerations may arise when counsel affirmatively misinforms a defendant about possible deportation and the defendant relies on that information in pleading guilty[,]” but noting “[n]o such allegation is involved in the case at bench”); *State v. Holley*, 75 Wn. App. 191, 198-99, 876 P.2d 973 (1994) (recognizing that affirmative misadvice regarding deportation may state ineffective assistance of counsel, but finding no such affirmative misadvice in the record before it); *In re Pers. Restraint of Yim*, 139 Wn.2d 581, 587-590, 989 P.2d 512 (1999) (acknowledging that “an affirmative misrepresentation to a defendant regarding the possibility of deportation might constitute a ‘manifest injustice,’ and, thus provide a basis for setting aside a guilty plea,” but finding “no such misrepresentation here”); *State v. Littlefair*, 112 Wn. App. at 777-78 (Bridgewater, J., dissenting) (noting the court had given defendant the opportunity to prove his attorneys were constitutionally deficient by remanding the case for an evidentiary hearing “to determine whether his attorneys misinformed him” regarding deportation consequences of his plea; because the hearing yielded no evidence that his attorneys affirmatively misrepresented those consequences, defendant had

“failed to show that he was deprived of his constitutional right to effective assistance of counsel”). Under this line of Washington cases, the Court of Appeals was required to apply *Strickland* to determine whether Mr. Sandoval received constitutionally deficient representation due to his counsel’s misadvice, and erred in failing to do so.

B. The Court of Appeals Decision Conflicts with Washington Law Because it Applies the Collateral Consequences Doctrine as an Automatic Bar to Mr. Sandoval’s Ineffective Assistance Claim.

While the Court of Appeals acknowledged it should apply *Strickland* “[i]n reviewing [Mr. Sandoval’s] claim of effective assistance of counsel,” it conducted no actual *Strickland* analysis of his counsel’s performance. *State v. Sandoval*, 2008 WL 2460282, *2-*3 (Wn. App. 2008), review granted, 165 Wn.2d 1031 (2009). That is, the Court undertook no factual inquiry to determine whether the advice Mr. Sandoval’s attorney gave him (i.e., that he would not be subject to immediate deportation by pleading to a deportable offense) was “reasonable in light of all surrounding circumstances.” *Id.* The Court did not examine his counsel’s investigation of immigration consequences, his exploration of alternative pleas that would not carry the same immigration consequences, or the availability of immigration resources to guide his advice. See Amicus Brief of the Washington Defender Association et al., also filed with this Court in this matter. Instead, the Court merely

concluded that Mr. Sandoval's attorney could not have been deficient because "deportation is not a direct consequence of his plea." *Id.* at *3. As a result, the Court rejected Mr. Sandoval's ineffective assistance claim – despite its apparent recognition that the "prejudice" prong of *Strickland* was satisfied. *See id.* (acknowledging "Mr. Sandoval may not have pleaded guilty if he had been properly advised of the consequences of his plea").

In denying Mr. Sandoval's ineffective assistance claim, the Court of Appeals relied primarily on four state cases – *State v. Malik*, *State v. Holley*, *State v. Ross*, and *In re Pers. Restraint of Yim* – none of which provides definitive guidance on these facts. First, *State v. Malik*, 37 Wn. App. 414, 680 P.2d 770 (1984), and *State v. Holley*, 75 Wn. App. 191, 876 P.2d 973 (1994), are Court of Appeals decisions that do not bind this Court. Secondly, both *Malik* and *Holley* are distinguishable from Mr. Sandoval's case, because in those cases defense counsel either failed to provide advice regarding deportation (*Malik*), or counsel and his client never discussed deportation consequences of the plea (*Holley*). *Holley* distinguished *Stowe*, but *Stowe* is directly on point with Mr. Sandoval's case, because Mr. Sandoval told his lawyer deportation was very important to him, the issue was discussed, and his attorney provided affirmative misinformation on that critical issue.

Finally, neither of the Supreme Court cases relied on by the Court of Appeals compels rejection of Mr. Sandoval's ineffective assistance claim. In *State v. Ross*, 129 Wn. 2d 279, 916 P.2d 405 (1996), this Court simply ruled that a mandatory community placement term was a direct consequence of a guilty plea, such that the guilty plea form's failure to advise about it warranted a withdrawal of the plea. *Ross* involved neither a claim of ineffective assistance, nor affirmative misadvice about deportation by defense counsel. *In re Pers. Restraint of Yim*, 139 Wn.2d 581, 989 P.2d 512 (1999) is similarly distinguishable. This Court's holding in *Yim* rested on the fact that there was no evidence defense counsel gave the defendant affirmative misadvice regarding deportation. *Yim*, 139 Wn.2d at 587-90. And in fact, this Court recognized that "an affirmative misrepresentation to a defendant regarding the possibility of deportation might constitute a 'manifest injustice,' and, thus, provide a basis for setting aside a guilty plea" (although "the record demonstrate[d] that there was no such misrepresentation" in that case). *Yim*, 139 Wn.2d at 588. Ineffective assistance based on affirmative misadvice by defense counsel about deportation was not at issue in *Yim*; it does not, therefore, dictate a ruling against Mr. Sandoval.

Indeed, *Yim* demonstrates how the Court of Appeals erred by failing to distinguish between Mr. Sandoval's ineffective assistance claim

based on affirmative misadvice (the viability of which *Yim* explicitly preserves) and the collateral consequences doctrine. By holding the collateral consequences doctrine categorically barred Mr. Sandoval's ineffective assistance claim, the Court of Appeals failed to give effect to *Yim* and other Washington authority that protects his constitutional right to effective counsel in the context of immigration misadvice, and this Court should reverse on that basis.

C. **State Law, When it Provides More Protection for Defendant's Rights than Federal Law, Provides the Appropriate Basis for Determining When Defense Counsel's Affirmative Misadvice about Deportation Consequences Constitutes Ineffective Assistance Invalidating a Guilty Plea.**

1. **Additional Protections for Guilty Plea Procedures and the Regulation of Practicing Attorneys Are a Matter of Local Concern.**

In this case, Washington law and standards, which are based on a local choice to provide additional safeguards beyond the minimal requirements of federal law, should govern the treatment of ineffective assistance claims based on affirmative misadvice by counsel about deportation. Criminal procedures added to promote fairness beyond the federal minimum are inherently a matter of local concern. *See State v. Smith*, 150 Wn.2d 135, 152, 75 P.3d 934 (2003) (criminal jury trial right "is a matter of particular local concern"). State and local rules therefore supplement the federal constitutional requirements of criminal procedure,

including the requirements for guilty pleas. *See e.g.*, CrR 4.2 (governing pleas in state superior court).

Standards for attorney practice are likewise a local concern, because attorneys are regulated by the states in which they practice. In Washington, this Court “has an exclusive, inherent power to admit, enroll, discipline and disbar attorneys.” *Short v. Demopolis*, 103 Wn.2d 52, 62, 691 P.2d 163 (1984) (citing *Graham v. Washington State Bar Ass’n*, 86 Wn.2d 624, 548 P.2d 310 (1976)). This Court’s power to regulate the practice of law “is necessary for the protection of the court, the proper administration of justice, the dignity and purity of the profession, and for the public good **and the protection of clients.**” *Seattle v. Ratliff*, 100 Wn.2d 212, 215, 667 P.2d 630 (1983) (citation omitted; emphasis added). Pursuant to its delegated authority (outlined in GR 12.1), the Washington State Bar Association also regulates criminal standards of practice, and to that end recently adopted “Standards for Indigent Defense Services.” which includes a standard urging that appointed counsel “be familiar with the collateral consequences of a conviction, including possible immigration consequence” to ensure that “indigent accused receive the effective assistance of counsel to which they are constitutionally

entitled.”³ Washington’s choice to provide additional protections, and its interest in regulating the standards governing criminal practice and the provision of effective assistance to citizens and non-citizens alike supports the application of state law in this context.

2. **Washington Should Follow the Lead of Other States that Have Relied on State Law to Hold that Defense Counsel’s Misadvice Regarding Deportation Consequences of a Plea States a Viable Ineffective Assistance Claim.**

Other states that have addressed facts similar to those presented by Mr. Sandoval’s case have relied on state law to hold that affirmative misadvice regarding immigration consequences states an ineffective assistance of counsel claim that is not categorically barred by the collateral consequences doctrine. These cases from other states provide persuasive guidance for this Court to follow in ruling on Mr. Sandoval’s case.

New Jersey: The New Jersey Supreme Court, for instance, recently held that a non-citizen defendant who had been misadvised by his attorneys as to immigration consequences of his plea had received ineffective assistance. *See State v. Nuñez-Valdéz*, 975 A.2d 418, 423-26 (N.J. 2009). As in Washington, case law in New Jersey observes a

³ “Standards for Indigent Defense Services,” Standard Fourteen, adopted by the Washington State Bar Association Board of Governors on September 20, 2007, available at www.wsba.org/lawyers/groups/wsbastandards408.doc. Pursuant to RCW 10.101.030, the WSBA standards “serve as guidelines” for the standards counties and municipalities are required to adopt for the delivery of public defense services.

distinction between the collateral consequences doctrine governing a court's advisement to the defendant and a defendant's right to effective assistance of counsel. *Id.* at 423.⁴ Recognizing that "a federal remedy may depend on whether deportation is a penal or collateral consequence[.]" the New Jersey court rested its decision on state law, stating:

... our analysis does not depend on whether deportation is a penal consequence. Rather, the issue is whether it is ineffective assistance of counsel for counsel to provide misleading, material information that results in an uninformed plea, and whether that occurred here.

Id. at 424. The court then proceeded to apply the *Strickland* standard to defense counsels' performance and determined, based on the immigration laws in effect at the time the plea was entered, that the record supported a finding that defense counsel had been ineffective by advising defendant his plea to a deportable offense would have no effect on his immigration status and, but for the bad advice, defendant would not have pled guilty. *Id.* at 424-26

California: The California Supreme Court has similarly refused to impose "a categorical bar to immigration-based ineffective assistance

⁴ The New Jersey court cited its previous holding in *State v. Bellamy*, 835 A.2d 1231 (N.J. 2003), stating "... whether a defendant should be advised of certain consequences of a guilty plea should not depend on ill-defined and irrelevant characterizations of those consequences." See *Núñez-Valdez*, *supra*, at 423 (citation omitted).

claims.” *In re Resendiz*, 19 P.3d at 1177. In *Resendiz*, a non-citizen defendant who was advised his plea to a deportable offense would cause “no problems with immigration” (other than ineligibility for citizenship) petitioned for habeas corpus claiming ineffective assistance. *Id.* at 1175. Although the court ultimately held defendant had not satisfied the prejudice prong of *Strickland*, and reversed the lower court’s grant of plea withdrawal, it unequivocally held “affirmative misadvice regarding immigration consequences can in certain circumstances constitute ineffective assistance of counsel.” *Id.* at 1177. In so holding, the court emphasized that a categorical bar for immigration-based ineffective assistance claims would be fundamentally incompatible with the “highly case specific” nature of the *Strickland* analysis, which requires courts to consider “whether counsel’s assistance was reasonable considering all the circumstances.” *Id.* at 1179 (citations omitted). It also recognized the distinct doctrinal origins of the collateral consequences rule (“a policy-based adjunct to the due process requirement that a court ensure the guilty pleas it accepts are voluntarily given”) and ineffective assistance claims (which are based on the constitutional right to counsel). *Id.* at 1179-80. Noting that California, like Washington, requires an immigration advisement on the guilty plea form, the court concluded:

... it does not follow that every jurisprudential limitation on courts' due process responsibilities applies (or should apply) without alteration to all types of ineffective assistance of counsel claims. ... Defense counsel clearly has far greater duties toward the defendant than has the court taking a plea. ... [T]o tie defense counsel's Sixth Amendment duties to the constitutional minima the due process clause requires of courts, by carving out, for erroneous advice concerning immigration consequences, an exception to the general requirement that counsel perform with "reasonableness under prevailing professional norms" would be illogical and counterproductive.

Id. at 1180-82 (citation omitted). As the *Resendiz* court noted, in a growing number of jurisdictions, there is a "clear consensus... that an affirmative misstatement regarding deportation may constitute ineffective assistance." *Id.* at 1185 (citation omitted).

New Mexico: The New Mexico Supreme Court has similarly ruled that affirmative misadvice regarding deportation consequences of a plea states a viable ineffective assistance of counsel claim. *See State v. Paredes*, 136 N.M. 533, 101 P.3d 799 (N.M. 2004). Distinguishing between the limited immigration advisement required of the court and defense counsel's broader constitutional duty to advise a defendant as to whether to enter a plea, the Court explained "[d]efense counsel is in a much better position to ascertain the personal circumstances of his [or her] client so as to determine what indirect consequences the guilty plea may trigger." *Paredes*, 101 P.3d at 803 (citation omitted). Acknowledging that "[d]eportation can often be the harshest consequence of a non-citizen

criminal defendant's guilty plea.”(*Id.* at 805), the Court held “[w]e agree with those jurisdictions that have held that an affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is today objectively unreasonable.” *Id.* at 804 (citation omitted). Requiring defense counsel to provide accurate advice regarding immigration consequences would, the Court held, be “consistent with the spirit” of the state’s statutory advisement, by ensuring “that the defendant has an understanding of the immigration consequences of the plea.” *Id.* at 805.

Illinois: The Illinois Supreme Court adopted the same rule in 1985. *See People v. Correa*, 485 N.E.2d 307 (Ill. 1985). In *Correa*, a non-citizen defendant brought an ineffective assistance claim based on his attorney’s affirmative misadvice that “[i]f your wife is an American citizen, then a plea of guilty [to a deportable offense] would not affect your status.” *Correa*, 485 N.E.2d at 548. The Court distinguished the role of court and counsel, stating “[i]t is counsel’s responsibility, and not the court’s to advise an accused of a collateral consequence of a plea of guilty[.]” *Id.* at 550. The Court also recognized that affirmative misadvice necessarily implicates the effectiveness of counsel: “we have unequivocal, erroneous, misleading representations that were made to defendant in response to his specific [immigration] inquiry, the accuracy

of which counsel could have ascertained before the pleas were entered.” *Id.* at 552. Stating defense counsel’s representation was “not within the range of competence required of counsel in such situations[.]” the Court held that affirmative misadvice regarding immigration consequences of plea can constitute ineffective assistance. *Id.* at 553.

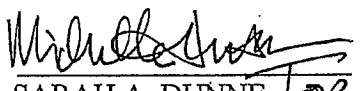
Washington law already recognizes that the collateral consequences doctrine will not bar an ineffective assistance claim based on affirmative misadvice of counsel regarding deportation. Here, the Court should join other states that have applied this rule to ineffective assistance claims and reverse the Court of Appeals. The Court, moreover, should rest its ruling on state law, regardless of the United States Supreme Court’s ruling in *Padilla v. Kentucky*, 129 S.Ct. 1317 (2009) (grant of cert.), a case involving the minimum federal constitutional standard rather than Washington State law.


VI. CONCLUSION

For the above reasons, the ACLU respectfully requests that this Court reverse the decision of the Court of Appeals on the grounds that, under state law, ineffective assistance claims based on affirmative

misadvice of counsel regarding deportation are not categorically barred by the collateral consequences doctrine, but must be individually assessed under the *Strickland* standard.

Dated this 18th day of December, 2009.

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APPENDIX A

STATE STATUTES, RULES, OR
STANDARD PLEA FORMS REQUIRING ADVISAL
OF IMMIGRATION CONSEQUENCES

| | |
|--------------------------|--|
| Alaska: | Alaska R. Crim. P. 11(c)(3) |
| Arizona: | Ariz. R. Crim. P. 17.2(f) |
| California: | Cal. Penal Code § 1016.5 |
| Connecticut: | Conn. Gen. Stat. Ann. § 54-1j |
| District of Columbia: | D.C. Code Ann. § 16-713 |
| Florida: | Fla. R. Crim. P. 3.172(c)(8) |
| Georgia: | Ga. Code Ann. § 17-7-93(c) |
| Hawaii: | Haw. Rev. Stat. §§ 802E-1, 802E- 2, 802E-3 |
| Idaho: | Idaho Crim. R. 11(d)(1) |
| Illinois: | 725 ILCS 5/118-8 |
| Iowa: | Iowa Code Ann. R. 2.8(2)(b)(3) |
| Kentucky: | Ky. Admin. Office of Courts, Form AOC-491 (Rev. 2/2003) |
| Maine: | Me. R. Crim. P. 11(h) |
| Maryland: | Md. Rule 4-242(e) |
| Massachusetts: | Mass. Gen. Laws Ann. ch. 278, § 29D |
| Minnesota: | Minn. R. Crim. P. 15.01 subd. 1(10)(d) (felony cases); Minn. R. Crim. P. 15.02(2) (misdemeanor cases) |

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| Montana: | Mont. Code Ann. § 46-12-210(1)(f) |
| Nebraska: | Neb. Rev. Stat. § 29-1819.02 |
| New Jersey: | N.J. Directive # 14-08 (Oct. 8, 2008) |
| New Mexico: | N.M. Dist. Ct. R. Cr. P. 5-303(F)(5) |
| New York: | N.Y. Crim. Proc. Law § 220.50(7) |
| North Carolina: | N.C. Gen. Stat. § 15A-1022(a)(7) |
| Ohio: | Ohio Rev. Code Ann. § 2943.031 |
| Oregon: | Or. Rev. Stat. § 135.385(2)(d) |
| Puerto Rico: | P.R. Laws Ann. tit. 34, App. II, Rule 70 |
| Rhode Island: | R.I. Gen. Laws § 12-12-22 |
| Texas: | Tex. Code Crim. Proc. Ann. art. § 26.13(a)(4) |
| Vermont: | Vt. Stat. Ann. tit. 13, § 6565(c) |
| Washington: | Wash. Rev. Code § 10.40.200 |
| Wisconsin: | Wis. Stat. § 971.08(1)(c) |